United States Department of Labor
Employees' Compensation Appeals Board

E.R., Appellant	)	
	)	
and	)	**Docket No. 21-0129**
	)	**Issued: September 27, 2021**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Fayetteville, NC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 2, 2020 appellant filed a timely appeal from an August 21, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish greater than one percent permanent impairment of her left lower extremity (leg) for which she previously received a schedule award.

[1] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On April 14, 2000 appellant, then a 48-year-old mail processer, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her lower back when lifting trays while in the performance of duty. OWCP accepted the claim for degeneration of the lumbar or lumbosacral intervertebral disc and sprain of the lumbosacral joint/ligament.

On October 20, 2015 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a letter dated November 5, 2015, OWCP advised appellant that the medical evidence in her file indicated that her condition had not yet reached maximum medical improvement (MMI), and, as such, no additional action could be taken on her request for a schedule award at that time.

On July 28, 2017 appellant underwent a laminectomy with decompression of nerve roots at L4-5 and L5-S1, including partial foraminotomy and/or excision of herniated intervertebral disc, which was performed by Dr. Daniel Williams, a Board-certified orthopedic surgeon.

On June 7, 2018 appellant filed another Form CA-7 for a schedule award.

On February 14, 2019 appellant requested that OWCP inform her of the additional evidence she needed to provide to establish her schedule award claim.

In a February 27, 2019 letter to Dr. Williams, OWCP requested that he provide a medical report, based on a recent examination of appellant, indicating whether appellant reached MMI and including a detailed description of any permanent impairment, the diagnosis upon which the impairment is based, and a permanent impairment rating based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[2]

In a June 11, 2019 report, Dr. Williams indicated that appellant complained of low back and left calf pain. He noted that she was injured on April 14, 2000 and had undergone an L4-S1 decompression surgery on July 28, 2017. Dr. Williams diagnosed lumbar radiculopathy and indicated that, while appellant improved after her surgery, she continued to have some left-sided sciatic-type symptoms and needed an evaluation for permanent restrictions. He stated that when she followed up he would provide a permanent disability rating based on 2 level lumbar decompression, continued sciatic symptoms, and permanent restrictions.

In a July 29, 2019 report, Dr. Williams indicated that appellant presented with sharp and achy pain that radiated into her left calf. He noted her date of injury and stated that he reviewed her functional capacity evaluation, which indicated that appellant had work restrictions of no lifting over eight pounds and sedentary work. Dr. Williams opined that appellant had a "permanent partial disability rating of 12 percent" based on a 2 level stenosis and continued radiculopathy.

[2] A.M.A., *Guides* (6th ed. 2009).

By decision dated August 15, 2019, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

On December 23, 2019 appellant requested reconsideration. In an undated letter, she indicated that her back was permanently impaired from her work injury and her quality of life had decreased substantially. Appellant noted that Dr. Williams instructed her to not lift over eight pounds.

On July 2, 2020 OWCP referred appellant to Dr. Robert Moore, a Board-certified orthopedic surgeon for a second opinion evaluation. In a July 27, 2020 report, Dr. Moore related that he reviewed OWCP's statement of accepted facts (SOAF) and appellant's medical records and diagnostic imaging. He related that she was injured at work on April 14, 2000 when she lifted mail trays and experienced pain in her lower back. Dr. Moore indicated that OWCP accepted appellant's claim for sacroiliac sprain and degeneration of the lumbar intervertebral disc L4-5 and L5-S1. He conducted a physical examination, which revealed a normal stance and gait, walking without an assistive device, straight leg raising negative bilaterally to 90 degrees, motor strength was intact throughout both lower extremities, 1+ ankle jerks and 2+ patellar reflexes were present bilaterally, and there was slight hypoesthesia in the left lateral calf and left hallux to light touch testing.

Dr. Moore reviewed lumbar spine x-rays conducted on that day, which revealed disc space narrowing at multiple levels throughout the lumbar spine, marginal osteophyte formation, sclerosis of the facet joints, and 10 degrees of lumbar scoliosis convex to the left. He diagnosed lumbar degenerative disc disease and facet osteoarthritis with left L5 radiculopathy. Responding to OWCP's questions, Dr. Moore indicated that appellant's subjective complaints of lower back pain, left gluteal and calf pain, and tingling/numbness in her left calf and great toe corresponded with his objective findings of a limited range of motion of the lumbar spine. He indicated that appellant reached MMI on that date. Referring to *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*), Dr. Moore indicated that his impairment rating was based on appellant's diagnosis of lumbar radiculopathy. Using Proposed Table 2, Spinal Nerve Impairment: Lower Extremity Impairments, page 6, he stated that appellant's mild sensory deficit in the L5 distribution corresponded to a default grade of C, indicating a one percent lower extremity impairment. Dr. Moore stated that appellant's grade modifier for functional history (GMFH) was zero due to no gait abnormality, her grade modifier for clinical studies (GMCS) was 1 onedue to x-rays confirming the presence of degenerative disc disease and facet arthritis. He did not assign a grade modifier for physical examination (GMPE). Dr. Moore calculated that the net adjustment was -1, resulting in grade B, which corresponded to a one percent left lower extremity impairment.

On August 14, 2020 Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA), reviewed OWCP's SOAF and appellant's medical records. He related that appellant was injured at work on April 14, 2000 and noted her accepted conditions. Dr. Katz related that appellant had a mild sensory deficit and no motor deficit. Using *The Guides Newsletter*, he indicated that appellant's L5 mild sensory default corresponded to the default value of one percent on the Proposed Table 2, page 6. Dr. Katz calculated a net adjustment of zero, resulting in class of diagnosis (CDX) 1 grade C, which indicated a one percent left lower

extremity permanent impairment. He related that there were no discrepancies between his impairment evaluation and Dr. Moore's impairment evaluation, and that appellant reached MMI on July 27, 2020.

By decision dated August 21, 2020, OWCP granted appellant a schedule award for one percent permanent impairment of the left leg. The period of the award ran for 2.88 weeks from July 27 to August 16, 2020.

LEGAL PRECEDENT

The schedule award provisions of FECA,[3] and its implementing federal regulation,[4] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.[5] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[6]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's *International Classification of Functioning Disability and Health (ICF): A Contemporary Model of Disablement*.[7] Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by GMFH, GMPE, and GMCS.[8] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[9] Evaluators are directed to provide reasons for their impairment choices, including the choices of diagnoses from regional grids and calculations of modifier scores.[10]

[3] *Supra* note 1.

[4] 20 C.F.R. § 10.404.

[5] For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

[6] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[7] A.M.A., *Guides* (6th ed. 2009), p.3, section 1.3a.

[8] *Id*. at 494-531.

[9] *Id*. at 521.

[10] *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

Neither FECA nor its regulations provide for a schedule award for impairment to the back or to the body as a whole.[11] Furthermore, the back is specifically excluded from the definition of organ under FECA.[12] The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth edition methodology. For peripheral nerve impairments to the upper or lower extremities resulting from spinal injuries, OWCP's procedures indicate that *The Guides Newsletter* is to be applied.[13] The Board has recognized the adoption of this methodology for rating extremity impairment, including the use of *The Guides Newsletter*, as proper in order to provide a uniform standard applicable to each claimant for a schedule award for extremity impairment originating in the spine.[14]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides,* with the DMA providing rationale for the percentage of impairment specified.[15]

ANALYSIS

The Board finds that appellant has not established greater than one percent permanent impairment of her left lower extremity (leg) for which she previously received a schedule award.

In his July 29, 2019 report, Dr. Williams concluded that appellant had 12 percent permanent impairment based upon her lumbar radiculopathy. However, he did not describe appellant's left lower extremity impairment in sufficient detail so that it can be visualized on review.[16] OWCP, therefore, properly referred appellant to Dr. Moore for a second opinion evaluation.

Dr. Moore's July 27, 2020 second opinion examination report reviewed OWCP's SOAF and appellant's history of injury, medical history, medical records, and diagnostic imaging. He conducted a physical examination and noted that appellant had intact motor strength, but slight hypoesthesia in the left lateral calf and left hallux to light touch testing. Dr. Moore indicated that appellant reached MMI on that date. Referring to *The Guides Newsletter*, he indicated that his impairment rating was based on appellant's diagnosis of lumbar radiculopathy. Using Proposed Table 2, Spinal Nerve Impairment: Lower Extremity Impairments, page 6, Dr. Moore stated that

[11] 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see A.H.*, Docket No. 19-1788 (issued March 17, 2020); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

[12] *See* 5 U.S.C. § 8101(19); *see also G.S.*, Docket No. 18-0827 (issued May 1, 2019); *Francesco C. Veneziani*, 48 ECAB 572 (1997).

[13] *Supra* note 5 at Chapter 3.700 (January 2010). *The Guides Newsletter* is included as Exhibit 4.

[14] *A.H., supra* note 11.

[15] *See supra* note 5 at Chapter 2.808.6(f) (March 2017).

[16] *See T.S.*, Docket No. 20-1420 (issued April 13, 2021).

appellant's mild sensory deficit in the L5 distribution corresponded to a default grade of C, indicating a one percent lower extremity impairment. He stated that appellant's GMFH was zero due to no gait abnormality, her GMCS was one due to x-rays confirming the presence of degenerative disc disease and facet arthritis. Dr. Moore did not assign a GMPE. He calculated that the net adjustment was -1, resulting in grade B, which corresponded to a one percent left lower extremity impairment.

Dr. Katz' August 14, 2020 DMA report indicated that he reviewed OWCP's SOAF and appellant's medical records. He reviewed appellant's history of injury and using *The Guides Newsletter*, he indicated that appellant's L5 mild sensory default corresponded to default value of one percent on Proposed Table 2, page 6. Dr. Katz related that, based on a review of the records, he assigned a GMFH of 1 and a GMCS of 1. He calculated a net adjustment of zero, resulting in a CDX of 1 grade C, which is the equivalent of one percent left lower extremity permanent impairment. Dr. Katz concluded that appellant reached MMI on July 27, 2020.

As noted, after obtaining all necessary medical evidence, the file should be routed to the DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*. While Dr. Katz selected a GMFH of 1 based upon appellant's continued complaints, and Dr. Moore selected a GMFH of 0, both agreed that pursuant to Proposed Table 2, page 6 of *The Guides Newsletter*, appellant's mild sensory loss at L5 is the equivalent of one percent permanent impairment of her left lower extremity. The Board has reviewed their calculations pursuant to Proposed Table 2 of *The Guides Newsletter* and finds that the evidence of record does not establish more than one percent permanent impairment of appellant's left lower extremity. As there is no evidence of record that appellant has more than one percent permanent impairment of her left lower extremity, appellant has not established that she is entitled to a greater schedule award.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established greater than one percent permanent impairment of her left lower extremity (leg) for which she previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 27, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board